

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT BECKLEY**

RICHARD M. JANNEY,

Plaintiff,

vs.

Civil Action No. 5:15-cv-13131

JOHN D. BERRYMAN

Defendant.

NOTICE OF REMOVAL

Now comes the United States of America (“United States”) and pursuant to 28 U.S.C. § 1446, gives notice of the removal of the above-styled action from the Circuit Court of Raleigh County to the United States District Court for the Southern District of West Virginia at Beckley. As grounds for removal the United States represents as follows:

1. John D. Berryman was named as a defendant in a civil action filed in the Circuit Court of Raleigh County, West Virginia, on or about July 30, 2015, bearing Civil Action No. 15-C-732.
2. The complaint alleges, generally, that defendant John D. Berryman engaged in tortious conduct causing personal injury to Plaintiff. This conduct apparently happened while Plaintiff and Defendant were attending a meeting at the Veteran’s Administration Hospital in Beckley, WV. A copy of the complaint is attached as Exhibit A to this Notice of Removal.
3. At all times relevant to the complaint, John D. Berryman was an employee of the United States. *See* Exhibit B attached to this Notice of Removal.
4. The Federal Tort Claims Act (“FTCA”), 28 U.S.C. § 1346(b), 2671-2680, provides the exclusive remedy for alleged tort claims related to the conduct of United States government employees acting within the scope of their employment. 42 U.S.C. § 233(a).

5. The Attorney General, acting through his designee, the United States Attorney for the Southern District of West Virginia, R. Booth Goodwin II, has certified that the actions of John D. Berryman, as set forth in the complaint, were within the scope of their employment. *See* Exhibit C to this Notice of Removal.

6. Upon said certification, this action is properly removed, without bond, at any time before trial to the United States District Court for the district and division in which the action is pending. 28 U.S.C. § 2679(d)(2); 42 U.S.C. § 233(c).

7. The removal of this civil action is properly effected by the filing of a notice of removal in the district court. 28 U.S.C. §1446; 42 U.S.C. § 233.

8. A copy of the Raleigh County Circuit Court docket sheet relating to this action is attached as Exhibit D to this Notice of Removal.

WHEREFORE, based upon the foregoing, the United States respectfully submits that this action is properly removed from the Circuit Court of Raleigh County, West Virginia, to the United States District Court for the Southern District of West Virginia at Beckley.

Respectfully submitted,

R. BOOTH GOODWIN II
United States Attorney

September 14, 2014

s/John F. Gianola
WV Bar Number: 10879
Assistant United States Attorney
United States Attorney's Office
300 Virginia Street, E., Room 4000
Charleston, WV 25301
Telephone: 304-345-2200
Fax: 304-347-5443
E-mail: John.Gianola@usdoj.gov

CERTIFICATE OF SERVICE

I hereby certify that on September 14, 2014, I electronically filed this **Notice of Removal** and I served a copy of this document upon the following person by United States Mail, postage prepaid:

Anthony M. Salvatore
205 Brookshire Lane
Beckley, WV 25801

s/ John F. Gianola
Assistant United States Attorney